IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 2ND JANUARY 2007 / 12TH PAUSHA 1928

OP.No. 23533 of 2002(S)

OA.462/2002 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONER:

B.JALEEL, REVENUE INSPECTOR,
ON DEPUTATION TO THE POST OF SUPERINTENDENT OF SURVEY, COLLECTORATE, UNION TERRITORY OF LAKSHADWEEP, KAVARATHI.

BY ADV. SRI.ABRAHAM VAKKANAL
SRI.ROY P.KURIAKOSE
SRI.SAJI KURIACHAN
SRI.M.R.NANDAKUMAR
SRI.PAUL ABRAHAM VAKKANAL

RESPONDENTS:
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1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF HOME AFFAIRS, NEW DELHI.

2. THE ADMINISTRATOR,
UNION TERRITORY OF LAKSHADWEEP, KAVARATHI.

3. COLLECTOR-CUM-DEVELOPMENT COMMISSIONER,
UNION TERRITORY OF LAKSHADWEEP, KAVARATHI.

4. DEPARTMENTAL PROMOTION COMMITTEE,
REPRESENTED BY ITS CHAIRMAN FOR THE POST OF ASSISTANT SETTLEMENT OFFICER, UNION TERRITORY OF LAKSHADWEEP, KAVARATHI.

5. K.BUZAR JAMHAR,
ASSISTANT SETTLEMENT OFFICER, AMINI,
LAKSHADWEEP.

6. I.C. POOKOYA,
ASST. SETTLEMENT OFFICER, CHETLAT,LAKSHADWEEP.

7. M.K.KUNHIKOYA,
STENOGRAPHER ON DEPUTATION TO OFFICE OF THE ASSISTANT DIRECTOR, SENSORS OPERATIONS, KADAMATH, LAKSHADWEEP.

R2 TO 4 BY ADV. SRI.S.RADHAKRISHNAN,SC,LAKSHADWEEP ADMN
R1 BY SRI.N.ANILKUMAR, ADDL.CGSC
R6 BY Advs. SRI.M.A.SHAFIK
SRI.JOHN NUMPELI (JUNIOR)
R7 BY ADVS. SRI.T.A.UNNIKRISHNAN
SMT.RESHMI POULOSE

R5 BY ADV. SRI.P.GOPINATH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.A.ABDUL GAFOOR &

K.R. UDAYABHANU, JJ.

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O.P.NO. 23533 OF 2002-s

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DATED THIS THE 2nd day of JANUARY 2006

JUDGMENT

Abdul Gafoor,J.

The writ petitioner attempted to challenge the promotion given to respondents 5,6 and 7 as Assistant Settlement Officers before the Central Administrative Tribunal, Ernakulam Bench. The O.A.was dismissed as per Ext.P23. Therefore, this writ petition.

2. Admittedly going by the recruitment Rules, Ext.P4, a person is qualified for promotion as Assistant Settlement officer only if he does have Typewriting speed test. Admittedly respondents 5 and 6 were exempted from that test going by Ext.P6. There is no challenge against Ext.P6 order, which permits exemption to the incumbents like respondents 5 and 6. When they were given promotion based on exemption and when the petitioner did not have that qualification nor the exemption

for that qualification, necessarily he cannot validly challenge the promotion given to respondents 5 and 6. In that regard, the Tribunal was justified in declining the challenge against the promotion given to respondents 5 and 6.

3. The petitioner also challenged the promotion given to respondent No.7. The ground urged before us is that respondent No.7 was promoted with effect from 29-6-2002, by which time he had become fully qualified by passing typewriting speed test on 23-11-2001. The prayer in this regard as urged by him in the O.A. before the Tribunal is as follows:

> "to declare that 7th respondent is not eligible to be appointed to the post of Assistant Settlement Officer which is notified as per Annexure-A8."

Annexure-A8 is Ext.P18 in this original petition. It is dated 5-7-2001. Going by the said prayer, the 4th respondent was promoted against the vacancy notified in Ext.P18 dated 5-7-2001. The submission made before us is that the petitioner

became qualified by passing the typewriting speed test only on 23-11-2001. Necessarily he could not have challenged the promotion of the 7th respondent, who was qualified for promotion against the vacancy notified in Ext.P18 . The claim for promotion shall have to be, in order to avoid arbitrariness, worked out with reference to the claims of the candidates as on the date of occurrence of vacancy as per the Full Bench Decision of this Court in **Varghese v. State of Kerala[1981 K.L.T.458]**. Therefore, he could not have challenged the promotion of the 7th respondent successfully. The Tribunal was,therefore, justified in not interfering with the promotion given to respondent No.7.

Therefore, the original petition fails and it is dismissed.

K.A.ABDUL GAFOOR
JUDGE

K.R.UDAYABHANU,
JUDGE

ks.

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ

O.P.NO. 23533 OF 2002-S

JUDGMENT

2-1-2007

Appendix:

PETIITONER'S EXTS:

EXT.P1: COPY OF RECRUITMENT RULES - 1973 OTIFICATION DATED 6-9-1973 OF THE ADMINISTRATION OF THE UNION TERRRITORY OF LACADIVES.

EXT.P2: COPY OF THE LAKSHADWEEP (DISTRICT ADMINISTRATION GROUP)RECRUITMENT RULES.

EXT.P3: COPY OF N OTIFICATION DT.2-9-88 OF THE ADMIN.OF UNION TERRITOY OF LAKSHADWEEP,KAVARATTI.

EXT.P4:COPY OF NOTIFICATIONDT.17-12-1990 OF DO.

EXT.P5: COPY OF THE EXTRACT OF THE RELEVANT PORTION OF THE LACADIVES, MINICOY AND AMINDIVI ISLANDS LANDLAND REVENUE AND THE TENANCY REGULATION 1965.

EXT.P6: COPY OF O.M.NO.14020/2/91/ESTT(D) DATED 29-9-1992 OF THE DEPARTMENT OF PERSONAL AND TRAINING.

EXT.P7: COPY OF REPRESENTATION DATED 1-4-1999 FROM THE PETIOTNER TO THE 3RD RESPONDENT.

EXT.P8:COPY OF OFFICE MEMORANDUM DTD.18-3-1998(RELEVANT PORTION).

EXT.P9: COPY OF OFFICE MEMORANDUM DTD.9-7-1999 OF THE ADMINISTRATION OF THE U.T.OF LAKSHADWEEP.

EXT.P10: COPY OF OFFICE MEMORANDUM DTD.26-2-2000 OF DO.

EXT.P11: COPY OF ORIGINAL APPLICATION IN O.A.364/2000 FILED BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXT.P12: COPY OFO REPLY STATEMENT DATED 5-8-2000 FILED BEFORE -DO-.

EXT.P13: COPY OF REJOINDER FILED IN OA.36400 BEFOE THE DO.

EXT.P14: COPY O ORDER DTD.8-2-2002 IN OA 364/2000 OF DO.

EXT.P15: COPY OF SENIORITY LIST DTD.28-5-02.

EXT.P16: COPY OF ORDER DATED 20-8-2000.

EXT.P17: COPY OF REPRESENTATION DATED 30-4-2002 FILED BEFORE THE 3RD RESPONDENT.

EXT.P18: COPY OF COIRCULAR DATED 5-7-2001.

EXT.P19: COPY OF APPLICATION DTD. 30-7-2001 FILED BEFORE THE 2ND RESPONDENT.

EXT.P20: COPY OF REPRESENTATION DTD.2-4-02 FROM THE PETIIONER TO THE RESPONDENTS.
EXT.P21: COPY OF MEMORANDUM OF O.A.DT.26-6-02 BEFORE THE CAT,ERNAKULAM BENCH.

EXT.P22: COPY OF OFFICE ORDER DTD.19-6-2002 ISSUED FROM THE 3RD RESPONDENT.

EXT.P23: COPY OF ORDER DTD.1-7-2002 IN OA 462/02 OF THE CAT, ERNAKULAM BENCH.

EXT.P24: COPY OF THE RLEVANT PORTION OF OM.

EXT.P25: COPY OF NOTIFICATION DATED 25-3-2003 OF THE ADMINISTRATION OF THE U.T.OF LAKSHADWEEP(COLLECTORATE).
RESPONDENTS' EXTS: NIL

TRUE COPY

P.S.TO JUDGE